K 1951

File No. O.I.P.C./51

Legal Department.

A **BRANCH**

Subject:—

Opinions under the

an. Penal code, 1860.

E. Parts I and II compiled after

examination and destruction.

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517

K.S.R.
517

Legal Department.

Rearrest of escaped prisoner Indian Penal Code. Sec. 224.

The view of the Home Department at A on page 12 is correct. Not only can this prisoner be arrested and made to run out the remaining period of his sentence but he can also be prosecutdd for an offence fallingnunder section 224, Indian Penal Code.

Id/- (J.R.D.)

Additional Secretary to Government.

U.R. to H.D.No.2688, dated the 12th February 1951

R.D.P.
29/6/56

S.C.

Office of the R.L.A.

The test of the obscenity pubishable under section 292 of the Indian Penal Code is "whether the tendency of the matter charged as obscenity is to deprave and corrupt these whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall" (See Queen Empress vs. Parauram Yeshvant I.L.R. 20 Bom. 1957and Kailaschandra Aharya vs. Emperor 60 Cal 201).

Of the three stories, the first one (Pavasatil Pavahne answers to the above test. The story makes light of illicit sexual intercourse and it describes the whole episode of which details are given as pleasurable to both and as satisfying an inner want of the woman. Chastity does not come into the picture at all. The second story (Hridayachi Hank) relates to the relations of ~~the~~ a husband and wife and how both of them are gradually drawn towards each other. There is some free description of sexual satisfaction but taking the story as whole it does not appear to answer the test of obscentity as above laid down. The third story (Lajjarakshak) also cannot be said to be obscene though it is in bad taste.

Sd/- (J.R.D.)

Remembrancer of Legal Affairs.

U.R. to H.D.(Poll),No.8802,

Dated the 5th June 1961.

R.D.P.
29/6/56

S.C.

L.D.R.I.No.10116 dt. 21-5-51

D.S. (Cr. L.)

Shri Jadhav and Shri Jahagirdar are alleged to have committed an offence under S. 409 read with S. 109 of the I. P. Code. For such an offence sanction under S. 197 Cr. Pro. Code is not necessary because it cannot be said that in committing the alleged offence they were acting or purporting to act in dischagee of their official duty. The point in covered by the Privy Council ruling in G. U. vs. the King (76 I. A. 41) and Thanindra Chandra Neogy vs. The King (76 I. A. 10) to more direct authority is to be found in the decision of the Federal Court in Dr. Hori Ram Singh vs. Emp. (A. I. R. 1939 F.C.43).

D. S. sd/- A.S.Sarala
21-5-51.

Addl. Secy. sd/- B. D. M.
21-5

R. L. A. sd/- J. R. D.
21-5

U. R. to C. S. D. / Estt. No. 8068,
dated the 22-5-51.

R.D.P.
29/6/56

B.C.

Office of the R.L.A.

The poster in question describes the conditions which according to Hindu religious books would arise in the World and necessitate the decent of Lord Krishna (by incarnation) and states that Lord Krishna did descend in the person of Mirza Gulam Ahmed Kadiani (deceased) and the poster states that those who follow him are indeed fortunate.

The poster read as a whole cannot be said to be intended to outrage the religious feelings of any class. The conditions which according to the poster necessitate the descent of Lord Krishna apply to the World in general and not any class in pa rticular. And the description itself cannot be said to be intended to outrage the religious feelings of a particular class.

The case therefore does not fall under section 295A of the Indian Penal Code.

Id/- (J.R.D.)

Remembrancer of Legal Affairs.

U.R. tp H.D.(Poll.)No. 565 Confl,
dated the 16th June 1951.

R.D.P.
29/6/56

S.C.

Office of the R.L.A.

Prosecution of -
Shri N.M.Pendharkar
Indian Penal Code, 1860.
section 409.

Shri N.M.Pendharkar, the Head Talati of Ramd Nandgaon, received Rs. 42-15-9 from Shri N.M.Patil on 24-3-1950 on account of land revenue. Shir Pendharkar is alleged to have utilised that xxxx amount for his own purposes till it was recovered from him on 23-6-1950. A departmental inquiry was held in which Shri Pendharkar explained that due to rush of work on the day in question mistakes occurred in issuing receipts and thus thes um of R. 42-15-9 remained unaccounted for. As a result of the departmental inquiry he has been punished by reverting him as Additional Talati and by withholding his next increament with permanent effect.

The Revenue Department now requests the R.L.A. to advise whether it would be legal and feasible to prosecute Shri Pendharkar.

The departmental inquiry and pubishment do not come in the way of the legality of the prosecution. The prosecution would be for an offence under section 409 Indian Penal Code.

The feasibility of the prosecution depends upon the evidence available. The important thing to prove is dishonest intention of the part of Shri Ramkrishna Pendharkar at the time of the alleged misappropriation. The report of the departmental inquiry shows that in the opinion of the Inquiry Officer the facts disclosed were more consistent with the being grossly negligent than with his entertaining a dishonest intention to misappropriated the money (see report of the Inquiry Officer). If so, a prosecution is not likely to succeed.

R.D.P.
2916
S.C.

Id/- (J.R.D.)

Remembrancer of Legal Affairs.

U.O. to R.D.No.9499, dated the 16th June 1951.

Legal Department.

The stories "Navadta Navra", "Unmad" and "Shikar and Shikari" fall within the meaning of the term obscene as used in section 292, Indian Penal Code. The sexual relationship dipicted in them is illicit. The illicit nature of it is sought to be made light of on the ground that the marital relations were not to the liking of the woman as an "Navadta Navra" or just on the ground of physical urge and love as in "Unmad" or on the ground that the woman considered this a proper way to repay an obligation. A prosecution under section 292, Indian Penal Code is therefore tenable in respect of these stories.

The picture on the front page cannot be said to be obscene.

Id/-

Additional Secretary to Government.

U.R. to H.D., No.19757, dated the 7th July 1951.

R.D.P.
29/6/56

S.C.

Legal Department.

The relevant allegations against Shri V. G. Kulkarni were that while he was a clerk in the office of Deputy Educational Inspector, Dharwar, he committed the following offences:-

(1) On or about 13th April 1950 he misappropriated to himself the sums of Rs. 367-2-0, Rs. 272-4-0 and Rs. 18-6-0 (in all Rs. 657-12-0) entrusted to him by his superior Shri M. G. Handral for obtaining the necessary Government drafts and despatching them to the village libraries of Ranebennur, Shirahatti and Navalgud talukas for their grants.

(2) On or about 13th February 1950 he misappropriated to himself a sum of Rs. 96-5-0 drawn from the treasury in respect of Shirhatti Taluka.

(3) Between the period of 25th March 1950 to 29th September 1950 he misappropriated a sum of Rs. 159-4-0 which was entrusted to him on 25-3-1950 to be paid to the taluka master, Navalur, but which he actually paid to the said master on 29-3-1950.

These allegations have been found by the Enquiry Officer (Educational Inspector, D. Dn.) as proved after a regular inquiry in which considerable oral and documentary evidence was adduced.

The Education Department now requests the R. L. A. to advise whether there is a prima facie case for the prosecution of Shri Kulkarni.

The evidence on all the three items has been pointed out in detail by the Enquiry Officer in his reports dated 26th February 1951. That evidence establishes a prima facie case for an offence under section 409 I. P. C. in respect of each of the above three items.

Id/-

Additional Secretary to Government.

U.R. to E.D.No., 10192, dated the 27th June 1951.

R.D.P.
29/6/56

S.C.

Office of the R. L. A.

Section 117 of the Indian Penal Code has not been held to be void and having regard to the amendment of the Constitution by the Constitution (First Amendment) Act, 1951 and having regard to the wording of section 3 of the said Amending Act it cannot be urged that section 117 was at any time void. No question of making any innocent act punishable as an offence arises.

Id/- (J.R.D.)

Remembrancer of Legal Affairs.

U.R. to H.D.(Spl),No.684-Confl,

dated the 13th July 1951.

R.D.P.
29/6/56

S.C.

Legal Department.

The facts in brief are these. Shri Patil who is a member of the Sonali Better Living Society and an elected member of the Kolhapur Market Commttee, wrote a letter on 24-10-50 to the Registrar, Co-operative Societies, Poona, making certain allegations against Shri A. A. Mahvy, the Assistant Registrar of Co-operative Societies, Kolhapur. A copy of that letter appears to have been sent to the Chief Minister and another to the Finance Minister Bombay. The Government in its Development Department wrote to the Registrar Co-operative Societies on 30-1-51 that it considered that a further inquiry be made on the following points:-

(i) Use by Shri Mahvy of the car of Sahakari Sangh;

(ii) using funds of the Sahakari Sangh to purchase his car;

(iii) Non-disposal of the complaint regarding the validity of the election of Shri Mohile.

The Registrar was asked to arrange for inquiries on these points to be made by the Dy. Registrar of Co-operative Societies, Headquarters Poona. Accordingly the Dy. Registrar made inquiries and in his report dated 21-5-1951 found the allegations not proved. The Registrar of Co-operative Societies in forwarding that report to Government stated in his letter dated 4-6-51 that the allegations were not proved and the complainant be formed that the allegations were found to be groundless. He further requested Government to consider why suitable action be not taken against Shri Patil for making wild and defamatory statements against a responsible gazetted officer.

2. R. L. A. is requested to advise whether there is a good case for the prosecution of Shri D. D. Patil-Taklikar of Kolhapur.

3. So far as the Government is concerned a prosecution can be only for an offence under section 182 I. P. C. For such a prosecution to succeed it must be shown that (1) the information given to the public servant, viz. the Registrar, by Shri Patil was false, (2) Shri Patil knew or believed it to be false, and (3) Shri Patil intended thereby to cause or knew it likely that he will thereby cause the public servant to use his lawful power to the injury or annoyance of Shri Mahvy.

4. The report of Dy. Registrar dated 21-5-1951 does not state that the allegations wer false. As regards the first allegation the fact of the use of the car by Shri Mahvy was found established but Shri Mahvy had an explanation to offer which in the opinion of the Enquiry Officer was reasonable. Shri Patil who made the allegation may not have known this explanation of Shri Mahvy and the use of the car being a fact his allegation cannot be said to be altogether false.

The Enquiry Officer does not say that the allegation was false but says that it was not proved. As regards the second allegation again all that the Enquiry Officer holds it that Shri Patil had not discharged his burden of proving it satisfactorily. It appears that the Enquiry Officer thought that the scope of his enquiry was limited to considering the evidence Shri Patil may adduce. He did not think it necessary to call such persons or for such documents as were disclosed in Shri Patil's evidence. Having thus circumscribed the scope of his Enquiry, he

he has still not found the allegation ~~fim~~ false but found it not satisfactorily established. Similarly as regards the third allegation the Enquiry Officer does not definitely state whether it is true or false but opines that it is a matter between Shri Mohite and Shri Savant and that at any rate Shrim Patil has not been able to prove that an injustice has occured.

5. These being the findings, a prosecution of Shri D. D. Patil under sec. 182 I. P. C. has little change of success.

Id/-

Additional Secretary to Government.

U.H.to D.D.No.710-Conf1,dated the 20th July 1951.

R.D.P.
29/6/56

S.C.

Legal Department.

Hygeia Dissolvenators

Indian Penal Code, 1860.

Messrs. Mapara Parekh & Co. cannot be said to have committed forgery (see Reg. vs. Maro Gopal 5 Bom. H. C. Reporter (Cr.) 57; In Re. Copalakrishna Heggade, 11 Cr. L. J. 401 and Lachman Lal vs. Emp. 20 Cr. L. J. 142). Their action so far does not amount to any other offence under the Indian Penal Code. A purchaser of the closet from them might be able to maintain an action for cheating provided he proves he was deceived and induced to purchase by reason of the false representation relating to the alleged opinion of the Director of Public Health. No other offence is disclosed. No prosecution or similar action by the Government against them is therefore possible.

Id/-

Additional Secretary to Government.

U.R. to L.S.G. & P. H. D. No. 722-Confl.
dated the 24th July 1951.

R.D.P.
29/6/56

S.C.

Legal Department.

The prosecution under sec. 182,I.P.C. of five of the signatories to the application dated 11-11-50 addressed to the D.S.P., North Shhara, is not opportune on the facts of the case.

2. That application makes certain allegations against Shri Babu Lokhande. The bowmd allegation against him is that he is on friendly terms with the Police and he takes adgantage of that fact for his own ends. Two instances of this are given. One is of one Savant, a friend of his, who has been charged w with theft and whom he wants to be acquitted and for t that and he is alleged to have asked certain witnesses, under threats, to turn round.m Another is of one Sopankosti who was charged with being in possession of opium but has been acquitted. In that case Shri Lokhande was the informant and the allegation in the application is that it was he who planted the opium on Sopankosti.

3. Now Shri Lokhande is admittedly a police informant (see the report of the P.S.I.,A.C.B., Sangli, dated 9-12-50). It was he who gave information of the opium case with, however, resulted in an acquittal The report of the Police Inspector, A.C.Belgaum, who was asked to inquire into the allegations made in the application dated 11-11-50 does not say anything about the allegation of Shri Lokhande's connection with Shri Savant against whom a theft case is pending It further appears that Shri Lokhande played an important part in the detection of case of corruption against the Mamlatdar Shri Bhalerao, and Shri Lokhande may be an important witness in the pending case against Shri Bhalerao. The five signatories who are sought to be proceeded against under sec. 182 appear.

appear to be important witnesses of Bhalerao (see the Police Inspector's report dated 3-5-51).

4. Under these circumstances, the prosecution of the five signatories under section 182 will be construed as intended to suborn them in respect of pending criminal proceedings. Besides, in view of the facts already pointed out, it would not be easy to establish that the said five signatories knew or beldieved the information given in their application to be false. A prosecution under section 182 should not be launched unless such a prosecution is desirable having regard to the interests of public justice. (see Bajrang Marwadi vs. Durga Prasad A.I.R. 1937 Pat. 31). It is open to Shri Lokhande to file a case for defamation, if he so thinks, in respect of the allegations made against him in the application. At any rate, the prosecution under section 182 I.P. C. would be premature at thic stage when Shri Lokhande is still to be examined in Shri Bhalerao's case in which his cross examination is likely to disclose all relevant fact about him.

Id/-

Additional Secretary to Government.

U.R. to H.D.No.12990,dated the 13th August 1951.

R.D.P.
29/6/56

5.C.

Legal Department.

The question for consideration is whether Shri D.G. Wagh, Agricultural Officer (under suspension) can be successfully prosecuted in respect of alleged criminal misappropriation of a sum of Rs. 6,127-10-0 belonging to the Government, and if so, the charges on which he can be prosecuted.

2. The facts in brief are these: Shri Wagh was sent two drafts of Rs.5000/- each dated 3-5-49 for disbursement in respect of bills etc., of his Malvan office. He cashed the drafts at the Treasury on 15-6-49 and received the amount. The amount was not credited in the Cash Book or in any of the account books of the office. Nor was any disbursement of the amount shown in the Accounts. According to Shri Wagh he did disburse the amount as follows:-

Rs.6,127-10-0	Payment of the Bill of a Contractor named Shri Sirsat on 9-9-49.
Rs.3,872-6-0	~~Industrial~~ Incidental charges incurred by subordinates on groundnut cake.

It appears, however, that on 8-9-50 Shri Wagh himself assured the District Agricultural Officer, Ratnagiri, that Shri Sirsat had notk been paid his Bill of Rs.6127-10-0 and recommended payment. Accordingly Shri Sirsat was paid by the D.A.O., Ratnagiri, on 8-9-50. When the audit of accounts was made innSeptember 1950 by the Government Auditors they wanted to know what had happendd to the two drafts of Rs. 5,000/- each which did not appear in the account books, Shri Wagh denied having received the drafts or cashed them, but when the Treasury entries showing that he had cashed them were brought to his notice, he admitted the fact of having cashed them. He then went to Malvan and brought two receipts relating to the payment of Rs. 6127-10-0 and Rs.3872-6-0. Shri Wagh's explanation is that he did pay Rs. 6127-10-0 to Shri Sirsat on 9-9-49 and that the same had remained to be noted in the account book through over-sight, and because the account books were not

being kept up-to-date. He explained the non... of the receipt earlier by stating that it had till then been misplaced and he did not remember its

3. The prosecution of Shri Wagh for criminal breach of trust in respect of Rs. 6,127-10-0 can be successful if it is proved that he had not paid that amount to Shri Sirsat on 9-9-49. The evidence on that point broadly is as follows:-

(1) Shri Sirsat's teastimony to the effect that no such amount was paid to him by Shri Wagh on 9-9-49 or on any other date.

(2) Absence of any entry in the account books, although the cash book used to be written by Shri Wagh himself.

(3) Assurance of Shri Wagh to the District Agricultural Officer, Ratangiri, on 8-9-50 that the Bill of Shri Sirsat was not paid with the result that on that assurance the D.A.O., paid Rs.6.127-10-0 to Shri Sirsat.

(4) The denial of Shri Wagh of having received the drafts although the amountx involved was large and could not be easily lost sight of.

(5) Absence of production of the receipt date the 9th September 1949 till 15-9-50, on which date the withdrawal of the amount of the drafts was brought home before the auditors at any time before nor also were any akaxk other vouchers produced by him.

4. As against this evidence the facts which go in favour of Shri Wagh are:-

(a) The receipt of Shri Sirsat dated 9.9.49. (Shri Sirsat says he had given a blank receipt without date but had not received any amount).

(b) The fact that the account books of the office did not use to be kept up-tp-date.

(c) Entry of payment of Rs. 6127-10-0 in a rough diary book kept by Shri Wagh for his personal use.

As regards the receipt dated 9-9-49, it is not free from suspicion. It is written in Marathi, though the other receipts of Shri Sirsat of the same date are in English The English receipts are written by Shri Sirsat's clerk but the Marathi writing on the disputed receipt is in Shri Wagh's hand. The date on the receipt is denied by Shri Sirsat to be in his hand. Shri Wagh also denies

that it is inxhis hand. But the Enquiry Officer's report states that it resembles Shri Wagh's hand-writing The receipt did not see the light of day till 15-9-1950. It is nowhere noted in the accounts. Shri Wagh's conduct is contrary to any payment having been made on that receipt. Shri Sirsat's account books which appear ito be regularly kept do not show a credit entry of Rs. 6127-1 on 9-9-49. The entry in the rough diary-book of Shri Wagh is not free from suspicion, according to the Enquiry Officer.

6. Under these circumstances, and in view of several other facts to which the Enquiry Officer has drawn attention in his report on Charge No.4, which relates to this misappropriation, there are reasonable chances for the prosecution of Shri Wagh being successful. The prosecution should be for an offence of Criminal breach of trust punishable under section 409 of the Indian Penal Code.

Id/-

Additional Secretary to Government.

U.R. to A. & F.D.No.13176,-Conf1

dated the 17th August 1951.

R.D.F.
29/6/56

S.C.

29

Legal Department.

The complaint against Shri Champaklal Dave was filed before the Magistrate Patan on 31-8-45. In that complaint the offences alleged against him were under those sections of the Baroda Penal Code which correspond with sections 323 and 388 I.P.C. Shri Dave being a subject of the Palanpur State, his extradition from Palanpur State was sought by the Baroda State. The extradition was in respect of offences under sections 323 and 385 I.P.C. which must have been the only offences disclosed in the evidence in the extradition proceedings. The Palanpur State held an inquiry and came to the conclusion that the complaint against Shri Dave was wholly false and had been filed to meet a case of dacoity against that very complaint. So the Palanpur State by their letter dated 7-8-46 refused to surrender Shri Dave. Therefore the Baroda State ordered the papers to be filed. Now after marger of both these states with Bombay the complaint against Shri Dave hasx been revived at the instance of one party who is not connected with it. The District Magistrate, Banaskantha is of the opinion that the complaint be withdrawn. His view is that the order of the Baroda State for filing of the papers amounted to an acquittal and Shri Dave cannot be tried again and in any case the revival of the complaint is barred by limitation. The District Magistrate, Mehsana, is of the contrary view. The R.L.A. is requested to advise on both these points.

2. The order of the Baroda State for the filling of the papers appears to be in pursuance of the provisions of section 400 of the Baroda Cr. Pro. Code. Sub-section (3) clause (kh) of that section provides "If he (the magistrate) is informed

that the accused will not be surrendered by the other State he shall dismiss the complaint." This by itself cannot amount to an acquittal because clause (ga) of the sub-section provides: "If after a complaint has thus been dismissed the accused comes back within the boundaries of this State, there is no objection to start fresh proceedings against him." In view of these provisions the view of the District Magistrate, Mehsana, that the dropping of the previous proceedings did not amount to an acquittal is correct.

3. The offences in respect of which extradition was sought were offences under sections 323 and 385 I.P.C. These offences it appears were according to the Baroda Criminal Procedure Code triable by a Second Class Magistrate. Now section 461 (2) (kh) of that Code provides that ~~affixxxxx~~ offences triable by Magistrates inferior to First Class Magistrate shall not be commenced after expiration of three years from the date of the offence. Here the offences are alleged to have taken place on 30-8-45. Therefore it would not be permissible to start fresh proceedings in respect of these offences after three years of that date. The Baroda Criminal Procedure Code was repealed on 30-7-49 by the Baroda State (Application of Laws) Order, 1949 but the repeal did not affect the validity of anything already done or any right already acquired or accrued or any release or discharge from any penalty, obligation or liability (see section 5 (iii) of that Order). Therefore the view of the District Magistrate, Mehsana, that the proceedings against Shri Dave can be reopened

~~Shri Dave can be reopened~~ at any time irrespective of the question of the period of 3 years is not correct.

Id/-

Additional Secretary to Government.

U.R. to H.D.No.13997,dated the 31st August 2951.

R.D.P.
30/6/56

S.C.

Office of the R.I.A.

In this case it appears that Messrs. Mapara Parekh and Co. has printed a pamphlet in which it has attached a certificate purporting to have been given by the Director of Public Health to its advertisement regarding its 'Apse Saf Closet'. It appears that certificate ~~Hygeiax Dissxxxxxxxxxx~~ was given by the Director of Public Health to the Hygeia Dissolvenator. But Messrs. Mapara Parekh and Co. have made it for their own product. The alteration of such certificate to the advertisement of their own product would amount to the making of a document with intent to cause damage or injury to the public. The conduct of Messrs. Mapara Parekh and Co. would amount to the making of a false document within the meaning of section 464, Indian Penal Code, and would be a forgery within the meaning of section 463 I.P.C. It can certainly be proved that the use of the D.P.H.'s certificate for their own product was made by the company with the object of misleading the public and inducing them to purchase their product. In such a case it is not necessary to prove that actual injury or damge was caused. The simple making of a false document constitutes forgery. It is true in Riasat Ali's case (I.L.R. 7 Cal. 352 at p. 355) Garth C.J. has ~~xxx~~ observed that the making of a document does not mean writing or printing but signing or otherwise executing it. But Dr. stokes does not agree with this view and has stated in Anglo Indian Code. Vol. I p. 269 that if that was the intention, the word 'makes' would not have been used in addition to execute etc. In this case the printing of the pamphlet and using the same with a false certificate would

amount to the making of a false document. The decision in Lachman Lal vs. Emperor reported in 20 Cr. L.H. 142 no doubt states that the making of a printed paper purporting to be a reproduction of a certificate that was never given does not constitute forgery, but it adds that this would not be so, if there was an intention to cause it to be believed that the printed paper was made by the authority express or implied of the giver of the certificate. In this case the printing of the certificate given by the D.P.H. to Hygeia Dissolvenator to Messrs. Alisons and Co. as being given to their own product 'Apse Saf Closet'. ~~Xhx~~ would be held as having been done with the intention of leading the public to believe that the certificate was given for the 'Apse Saf Closet'. The decision in Lachman Lal's case ~~xxxx~~ would support the view that the offence of forgery was committed in this case. The papers may be sent to the Commissioner of Police for investigation and he should be asked to take necessary steps for the prosecution of the persons responsible for the offence. The question whether Alisonn and Co. can institute a ~~xxx~~ prosecution of cheating against Mapara ~~Xxxxx~~ Parekh and Co. is not material for the purposes of this case.

Id/- (J.R.D.)

Remembrancer of Legal Affairs.

R.D.P.
30/6/56

S.C.

Legal Department.

The material allegations made by Shri Sahadu Tukaram Bhor in his application dated the 6th September 1949 to the District Magistrate, Ahmednagar, are that -

(1) one bag of bajri was transported from Malegaon Pathar to Sangamner by Raghunath Ramchandra Bhor in his cart in the night of 24th August 1949.

(2) Gulabrao Police Patil accepted an illegal gratification of Rs. 30/- for allowing that transport.

(3) Raghunath Police constable although he came there and learnt of these facts took no steps and allowed the cart with the bag to go and thus abetted the above offences.

2. The evidence disclosed in the inquiry made by the Police Sub-Inspector, Sangamner, shows that ~~it~~ those allegations are false and that Shri Sahadu knew or believed them to be false. Particularly there is good evidence to show that Raghunath Police constable was at the time of the alleged offence not at all present at the place of the offence but was elsewhere and could not be aware of the alleged incident.

3. Therefore a prosecution of Shri Sahadu Tukaram Bhor for an offence under section 182, I.P.C., is feasible. The proposal of the District Magistrate, Ahmednagar, which is supported by the opinion of the Government Pleader, Ahmednagar that Shri Sahadu Tukaram Bhor should be prosecuted for an offence under section 182, I.P.C., may be accepted.

Id/-
Additional Secretary to Government.

U.R. to H.D.No.12905, dated the 10th August 1951.

R.D.P.
30/6/56

S.S.

Legal Department.

The question referred is whether a prosecution of Shri Mahdeo K. Shete of Khedgaon under section 182 of the Indian Penal Code will be successful.

Shri Shete made an application to the District Deputy Collector, Nasik on 21st December 1950 wherein he made the follwing allegations against (1) Shri Kashinath Balu Boraste the Head Talati and (2) Shri Daga Jaba Sutar the Assistant Talati of Khedgaon, taluka Dindori.

A. They do not supply in time the extracts of Records of Rights required for court purposes and in that matter they harass the people of Shindwad, Jaolekavni Gondegaon and Khedgaon.

B. They do not extend the period of the ration cards of the labourers in time.

C. They remain absent without leave for 3 or 4 days going to Nasik and other places.

D. They take sides in village parties and thus increase quarrels.

E. They give extracts to the rich and the Savkars early but give them late to agriculturists.

He prayed that the people were therefore dissatisfied with the two talathis and they may be transferred.

The application was sent down to the Mamlatdar of Dindori for inquiry who called upon Shri Shete to adduce all evidence oral and documentary in support of his allegations. Accordingly Shri Shete appeared before the Mamlatdar on 24th January 1951. His oral statement was recorded. In that oral statement he gave the names of persons who were denied the extracts in time, the names of persons ~~xhxxxxxxx~~ whose ration cards were not extended in

time, the dates of absence from headquarters without leave, the names of parties between whom the talatis took sides and the ~~xxxx~~ names of Savkars and righ Zamindars who were given extracts even without applications. He explained this attitude of the talatis on the ground that they do the work of those who pay them tips. He gave the names of persons from whom tips were demanded and whose workwas not done in time on the tips being refused. He stated that he had not personnaly seen these payments and had no personal knowledge of all this but was stating it on information and complaints received by him in his usual rounds as a social worker. As regards absence without leave he stated that he inferred from the absence that it was without leave.

The Mamlatdar then issued notices to all the 30 persons whom shri Shete had named in connection with one allegation or another to appear and give their say. None of them appeared but written statements were received from five of them denying Shri Shete's allegation. The Mamlatdar did not examine those five nor does he appear to have ascertained whether the five statements received by him were really signed and sent by the persons purporting to do so. The Mamlatdar did not try to seek out any of the 30 persons and ascertain from them personally about the truth or falsehood of the allegations.

For a successful prosecution for an offence under section 182 Indian Penal Code it must among other things be proved that

(1) the information given by Shri Shete was false and

(2) Shri Shete knew or believed it to be false.

The inquiry made by the Mamlatdar does not satisfactorily establish these facts. The Mamlatdar's opinion that Shri Shete's allegations are false and baseless is based almost entirely on the fact that Shri Shete did not examine any of the persons named by him and did not produce documentary evidence. That is not sufficient. It is for the prosecution to prove that the information was false and that Shri Shete knew or believed it to be false The Mamlatdar should therefore have contacted a fair number of the 30 named persons and recorded their statements on the relevant points.

Therefore in the absence of any other material on record and particularly in the absence of anything to show that a fair number of the 30 named persons would depose in court contrary to what Shri Shete has ascribed to them, it is not possible to say whether the prosecution of Shri Shri Shete under section 182 Indian Penal Code is likely to succeed.

Id/-

Additional Secretary to Government.

U.R. to R.D.No.16560, dated, 18th October 1951.

R.D.P.
30/6/56

5.C

Legal Department.

Shri Ravanappa Mallappa Hotege while he was officiating as Taluka Master, Sholapur, was entrusted in April 1950 by the Deputy Educational Inspector, Sholapur, with a sum of Rs. 477-5-0 for disbursement to Secretaries of village libraries. He disbursed Rs-276-11-0 but did not disburse the remaining amount. Nor did he hand over the balance of Rs. 200-10-0 to his successor Shri Koli and kept him in the dark about it. When he was called upon by the Deputy Educational Inspector, to return the balance he returned it on 12th September 1950.

2. The question for consideration is whether Shri Hotege can be prosecuted.

3. The offence which he can be alleged to have committed is criminal breach of trust puhishable under section 409 Indian Penal Code. For a prosecution for that offence to succeed it will have to be established that there was dishonest intention on the part of Shri Hotege in retaining the sum of Rs. 200-10-0 with him till 12th September 1950. It appears from the letter of the Deputy Educational Inspector, Sholapur, that ordinarily disbursement would take upto the month of July to complete. Therefore, the period to be accounted for is at best one month and 11 days. Having regard to the fact that in answer to the office reminder of Deputy Educational Inspector, Sholapur, dated 1st September 1950 Shri Hotege stated that approximately the amount had been disbursed and the remaining half would be disbursed and the acquittance rolls returned by the end of the month and having regard to the absence of any positive acts or circumstances showing dishonest intention on his part in retaingin the balance of the amount the success of the prosecution of Shri Hotege for an offence under section 409 Indian Penal Code is doubtful.

on his part in retaining the balance of the amount the success of the prosecution of Shri Hotege for an offence under section 409 Indian Penal Code is doubtful.

Id/-

Additional Secretary to Government.

U.R.to E.D.No.13798,dated 28th August 1951.

R.D.P.
30/6/56

S,C.

Legal Department.

The question referred to the R.L.A. is whether the statement of Shri Nana Ramji Patil in his speech at a meeting of the Shetkari Kamgar Paksh (Deshmukh group) on 15-8-1951 at Islampur that "they would take part in the elections but they would also resort to violence as a last resort for the establishment of a People's rule in the country" is actionable.

2. The statement must be read in its context. Shri Nana Ramji Patil in his concluding speech as president of the meeting, first referred to instances of the police firing on the masses at different places and the disrespect shown by the police to women and emphasised the necessity of peoples's rule. He went on to say that elections were mmnly a stepping stone to that rule. But even the elections, he suggested, were imperfect because youths between 16 and 30 who are capable of understanding things were not considered adult enough to be given a right to vote. He then went on to say that they (meaning either the above youths or the party for which he was speaking) now desired to be ruled by men of their own choice. He then stated,

> "They did not believe in Sarvodaya policy of the Congress but in class struggle. They would take part in the elections but they would also resort to violence as a last resort for the establishment of Peoples Rule in this country."

3. The implications of this statement in the speech should be considered also in the light of Nana Patil's elucidations of certain points in the speeches of the other speakers. One of the speakers Shri Deshmukh had stated in his speech that after the formation of their own ministry if capitalists or men like Tandon created an obstruction, cast an evil glance at them or raised a hand against them, the people were capable of breaking

that eye or cutting the hand. After the speech of Shri Deshmukh, Shri Nana Ramji Patil immediately explained that by the words "break the x eyes and cut the hands" w was meant removal of power from the hands. He said that he had to clarify this as a President as the reporters present at the meeting might make a mistake in their report. Similarly another speaker spoke of selling of power to support a collection for the purse and Shri Nana Patil explained that what was meant was contribution and not literal selling as that would be an offence. He agains emphasised that the reporters may not make a mistake.

4. Therefore when the anxiety of Shri Nana Patil in not letting any speaker say anything which would be contrary to law is borne in mind and his speech is read as a whole it becomes clear that his reference to violence as a last resort (assuming the word used was 'violence') means that violence will not be resorted to till all other methods are exhausted. It is not and cannot amount to an incitement of violence, much less to an incitement to an offence.

5. The speech of Shri Nana Ramji Patil is therefore, not actionable.

Id/-

Additional Secretary to Government.

U.R. to H.D.No. 16667, dated the 15th September, 1951-

R.D.P.
30/6/56

S.C.

No. 13260.
Legal Department,
Bombay Castle (Bombay No.1),
18th August 1951.

To

The District Magistrate,
Nasik.

Subject:- Prosecution under Sec. 178 I.P.C. for the offence of refusing to take an oath.

Sir,

With reference to your letter No. MAGNS-744, dated the 22hd June 1951, on the subject noted above inquiring whether Shri Usmani Gani Nagibulla can be prosecuted under section 178 of the Indian Penal Code for refusing to take an oath, I have the honour to observe as follows:-

Section 178 of the Indian Penal Code enacts that "Whoever refuses to bind himself by an oath or affirmation to state the truth, when required so to bind himself by a public servant legally competent to require that he shall so bind hemself, shall be punishable with simple imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or both." In order to be punishable under this section three things are required to be proved and one of them is that the public servant was legally competent to require that the accused shall swear or affirm to state the truth. It must, therefore, be considered whether the Mamlatdar had such power.

The proceedings before the Mamlatdar were held under section 65(3) of the Bombay District Municipal ~~Amendix~~Act, 1901. That section provides that "in a municipal district for which there is a municipal Commissioner, such Municipal Commissioner and elsewhere the managing Committee or any Committee or Committees to which the Municipality delegate the powers and functions of the managing Committee in

this behalf, or any Government officer to whom, with the permission of the Commissioner, the Municipality delegate and they are hereby empowered to delegate, the powers and functions of the managing Committee in this behalf, ~~xhhhy~~ shall, after allowing the applixx cant an opportunity of being heard in person or by agent (a) investigate and dispose of the objections etc." The section empowers the Government Officer to hear the applicant in person or through his agent and also to investigate and dispose of his objections which are required to be filed in writing but does not expressly empower him to administer an oath of affirmation. Under section 4 of the Indian Oaths Act, 1873, all courts and persons having, by law or consent of parties, authority to receive evidence, are authorised to administer oaths and affirmations in discharge of the duties or in exercise of the powers imposed or conferred upon them respectively by law. Section 65(3) of the Bombay District Municipal Act, nowhere empowers the Government Officer to receive evidence or to summon witnesses (Contrast sec. 22(2) of the Bombay District Municipal Act). The Government Officer, therefore, does not appear to be empowered to receive evidence and consequently to administer an oath or affirmation. His duties appear to be more or less executive like that of the Collector under the Land Acquisition Act who it is held is not a judicial officer though he has powers of summoning witnesses and recording their statements (see Ezra vs. Secretary of State, 30 Cal. 36 at p. 85). In view of this position, it appears that it was not competent to the Mamlatdar to administer an oath to the applicant and consequently no offence is committed by him in refusing to take the oath.

R.D.P.
2016
S.C.

I~~x~~-
Yours faithfully,

Additional Secretary to Government.

Legal Department.

In the three speeches under reference, Shri Nana R. Patil explained to his audience that the aim of the Shetkari Kamgar Party (Deshmukh Group) was the establishment of the rule of the masses. He exhorted the workers and labourers to take part in the general elections, select their own candidates and stated that his party would support those candidates. The alleged objecticnable portions in his three speechs are those:

A. "The masses would try to establish their rule by following all possible democratic means and if it did not succeed, then they would be forced to take recourse to armed revolution to establish their rule."

B. "The S,K,Party would try to establish rule of the Kisans by following all democratic ways and if it did not succeed, then, however, finally they would be forced to resort to an armed struggle."

C. "The masses would follow all possible democratic ways of establishing Kisan Raj. If, however, all such ways failed then they would finally resort to armed struggle to achieve their goal."

When the speeches are considered as a whole, they amount to an immddiate exhortation for taking part in the election, getting their candidate selected and elected and following all democratic methods to establish rule of the masses. They envisages a possible future action in the shape of an armed struggle if all democratic methods fail. The speeches, therefore, cannot amount to an incitement to violence or to the commission of any offence and are not actionable.

Sd/-

Additional Secretary to Government.

U.R. to H.D.No. 15251, dated the 24th September 1951.

R.D.P.
30/6/56

S.C.

Legal Department.

Shri R.K. Khamkar was awarded the Indian Police Medal in 1946 and then the Rules in force governing the award were those issued under the Royal Warrant in 1932 as amended from time to time. According to Article Eight thereof the Governor General is competent to cancel and amend the award and that thereupon the name of the person to whom it is awarded shall be erased from the Register of persons to whom the Medal has been awarded. It further provides that before receiving the award the person to whom it is awarded shall enter into an agreement to return the Medal if his name be erased. Before receiving the Medal Shri Khamkar had entered into an agreement dated the 12th March 1946 according to the Rules and thereby undertook to return the Medal should his name be ~~xxx~~ erased His Medal was cancelled and was forfeited in 1950 for misconduct and the Rules then in force were the Rules that were amended from time to time since their inception and on consolidation were continued in force after 15th August 1947 under the Royal Warrant dated the 1st May 1948. Having regard to the conditions of the award and the agreement of Shri Khamkar dated the 12th March 1946 the Medal was the property of Government and Shri Khamkar must be deemed to be entrusted with that property. By not returning the property and throwing it into the river Shri Khamkar has disposed of it in violation of the legal contract with Government whereby he had agreed to return it to them and has thus prima facie committed an offence of criminal breach of trust puhishable under section 406, I.P.C. His act in throwing away the Medal into the river to prevent its return to the Government who were entitled to claim its return also amounts to mischief punishable under section 426 I.P.C. As the

monetary value of the medal could not be much and he very probably threw it in the river in a fit of depression to forget his connection with the Police Department from which he had been dismissed, it is for the Home Department to consider whether it would be advisable in the circumstances to prosecute him.

Id/-

Additional Secretary to Government.

U.R. to H. D. No. 14404-Confl,

dated the 10th September 1951.

R.D.P.
2/7/56

S.C.

Legal Department.

By the advertisement in question Dr. P.A.Cheiro represents to the public that he is the recipient of gold medals from Sir Maharajsingh, His Excellency the Governor of Bombay and the Governor General of India. There was no Governor General of India at the time of advertisement was given and no name of the Governor-General is mentioned. The statement relating to Sir Maharajsingh having given a gold medal is found to be false. It is apparent that Dr. Cheiro wanted to deceive other persons and that such deception was dishonest and intentional. But such deception would not amount to an offence of cheating unless it can be established that some person was as a result of that deception induced to deliver any property to any person or to consent that any person shall retain any property or to do or omit to do anything which he would not do or omit if he were not so deceived and which act or ommission causes or is likely to cause damage or harm to that person in body, mind, reputation or property. If for example any person was induced to purchase or induced to consult him regarding any matter as a result of the above false representation and if that person paid him for it or as a result of that purchase or consultation suffered in body, mind reputation or property, it would then be possible to prove that Dr. Cheiro had committed an offence of cheating.

Id/-

Additional Secretary to Government.

U.R. to H.D.No.14360,dated the 7th September 1951.

R.D.P.
2/7/56

S.C.

OFFICE OF THE R. L. A.

The question for consideration is whether the editorial article under the heading "Independence" in the issue of the Anglo-Lusitano of Saturday the 18th August is actionable under section 124-A of the Indian Penal Code.

2. The article in question reviews the achievements of the Indian Government during the four years of Independence. Those achievements are analysed first on considerations of economic property and next on considerations of political stability and peace.

3. In describing India's action in Hyderabad as an invasion, occupation of Junagad as seizure and help to Kashmir as directed against Pakistan, the article seeks to suggest that India's aims are aggressive. By suggesting that the merger of the native States with India was not voluntary and was not really welcomed by the people of the said States, India is being shown as undemocratic. When these expressions and sentiments are read in the light of the suggestions that the State people were happier under their Rulers and the Indian people were happier under the British and four years of Independence have brought no prosperity and no peace but economic suffering and wastage of public money, the intention to create bad feelings of harted, contempt or disaffection towards the Government established by law in India is manifest. The article would have been actionable under section 124-A of the Indian Penal Code, before the new Constitution came into force. But the said section has been held to be void as being inconsistent with Acticle 19 (2) of the Constitution. (See Tara Singh Gopichand vs. The State A. I. R. 1951 Punjab 27).

Article 19 (2) has since been recently amended but the amendment does not alter the position.

Id/- (J.R.D.)

Remembrancer of Legal Affairs.

U.R. to H.D.Xxx(Poll.)No.,15701,
dated the 4th October 1951.

R.D.P.
2/7/56

S.C.

OFFICE OF THE R. L. A.

It would be seen from the P. & S. D. papers in File No. 5486/46 that the accused, Mrs. Margaret Gharda had come to India duly armed with a power - of - attorney from her husband, the father of the child (vide p. 43 of the papers). This power of attorney entitled Mrs. Gharda to assume custody of the child and also to make arrangements for his departure to U.S.A. A father is the natural guardian of the child and as such he was entitled to take his child out of the custody of his uncle. No offence of kidnapping as defined in section 361 I.P.C. has, therefore, been committed in this case by the taking away of the son out of the custody of the complainant (see Saharali v. Kamisuddin 58 Cal 897).

Id/- (J.R.D.)

Remembrancer of Legal Affairs.

U.R. to P. & S. D. No. 889-Confl,
dated the 23rd October 1951.

R.D.P.
2/7/56

S.C.

Legal Department.

Shri Viraji B. Bhanderi of Tarwada, taluka Dhari, district Amreli made certain allegations against the Mamlatdar of Dhari (Shri M.A. Malek) in a letter dated 26th December 1960 addressed to the Hon'ble the Home Minister, Bombay. Most of the allegations were vague. Those which were specific were as follows:-

(1) At the instance of the Mamlatdar more than 200 maunds of bajri were purchased from village Chalala of taluka Dhari at Rs. 7-8-0 per maund and the said bajri was sold to the public of Dhari at Rs. 8-4-0 per maund.

(2) On behalf of and at the instance of the Mamlatdar of Dhari 5 to 6 cases have been launched against one agriculturist Shri Devshi Khoda of Jira, taluka Dhari, and he was put in jail for a week under the Public Security Measures Act in order to obtain grain from him. The agriculturist has to rot in jail as a victim of the revengefulness of the Mamlatdar.

Shri Bhandeki asked that steps be taken in the matter. Accordingly an inquiry was made by a responsible officer and it has been found that the allegations are false.

The Revenue Department now requests the R.L.A. to consider whether it would be feasible to prosecute Shri V. R. Bhanderi under section 182 of the Indian Penal Code.

In view of the facts stated in the first para and in view of the fact that from what is disclosed in the inquiry it appears that Shri Bhanderi must have known or believed the allegations made by him

to be false, a prosecution of Shri Bhanderi under section 182 of the Indian Penal Code is feasible. The complaint has to be in writing and will have to be filed by the public servant concerned that is the public servant to whom Shri Bhanderi gave information by the above letter. (See sec. 195 (1)(a) of the Criminal Procedure Code.) When the complaint is by a public servant acting or purporting to act in discharge of his official duties he is not required to be examined by the Magistrate at the time the complaint is presented to the Magistrate (See Sec. 200 (a) Criminal Procedure Code.)

Id/-

Additional Secretary to Government.

U.R. to R.D.No.634-Confl,dated the 2nd July 1951.

R.D.P.
2/8/56

S.C.

Legal Department.

The question referred to the E. L. A. to whether the books "Chander Mohani" and "Kharka-e-Somnath" are actionable under section 18 of the Indian Press (Emergency Powers) Act, 1931, on the ground that they come within the class of publications falling under clause (h) of sub-section (1) of section 4 of the said Act, that is to say, they tend to promote feelings of enmity or hatred between different classes of citizens of Indian.

The two books are two parts of a historical novel dealing with an episode in the life of Sultan Mahmud of Ghazni. The episode dealt with is his invasion of Somnath. The writer endeavours to make out that the invasion was primarily intended to recover a Muslim girl left behind at a previous invasion who was ~~xxx~~ brought up by the Raja of Somnath under the name of Chandermohani. The second volume (Kharka-e-Somnath), however, deals at length with encounters between Mahmud's forces and the Rajputs culminating in the fall of Somnath and the breaking of the idol by Mahmud.

The first volume extends over 250 pages and the second about 200 pages. The passages which are pointed out as objectionable in the first volume are at pages 4, 38, 39, 81, 91, 105, 131 and 135 and those which are pointed out as objectionable in the second volume are at pages 361, 334, 461, 551-57. These have been fully translated and the translations appear in the papers sent to this Department by the Home Department with reference.

These passages though related to the historical facts, tendencies and modes of thought of the times with which the novel deals are more or less an attack on Hindu way of life and have a tendency to promote feelings of enmity or hatred between Hindu and Muslims. They will therefore fall within the class of publications actionable under clause (h) of xx section 4(1) of the Indian Press (Emergency Powers) Act, 1951.

Id/-

Additional Secretary to Government.

U.R. to H.D.No.17489,dated the 5th November,1951.

R.D.P.
2/7/56

S.C.

Legal Department.

The facts in brief are these:- On 23rd February 1950 Shri Keshava Kimatral gave information to the Ulhasnagar 'B' Division Police that a sealed cocogem tin containing liquor was being kept in the shop of one Shri Doulatram Ramchandani. Accordingly, the Police Sub-Inspector searched the shop and found the tin which, on examination, was found to contain illicit liquor. Shri Doulatram was prosecuted. His defence was that one Shri Tharumal had left the said tin with him with a chit from Shri T.T. Gehani in which it was stated that the tin was of cocogem. He produced the said chit. On enquiry it was found that the writing on the said chit resembled the hand-writing of Shri T.T. Gehani. The defence of Shri Doulatram was, therefore, accepted by the Magistrate and he was discharged.

2. The H.L.A. is now requested to advise whether the Police can proceed against Shri Gehani under section 182 of the Indian Penal Code.

3. Shri Gehani cannot be proceeded against for an offence under section 182 of the Indian Penal Code. For that section to apply it must, among other things, be proved that Shri Gehani gave false information to a public servant. Here the information given to the public servant (the Police) was that a sealed cocogem tin containing liquor was being kept in the shop of Shri Doulatram. This information was given not by Shri Gehani but by Shri Keshav. Besides, this information was found to be true. Therefore, a prosecution under section 182 Indian Penal Code against Shri Gehani or the informant cannot lie.

4. The only other section of the Indian Penal Code which is relevant is section 211. For that section to apply it must be established that it was Shri

Gehani who instituted or caused to be instituted the criminal proceedings against Shri Daolatram, knowing that there was no just or lawful ground for such proceedings. Here it was Shri Keshav who gave infax information and not Shri Gehani. Unless it could be established that Shri Keshav gave that information at the instance of Shri Gehani and that Shri Gehani had no just or lawful ground for causing these criminal proceedings to be instituted an offence under section 211 cannot be made out against Shri Gehani. Besides, in respect of an offence under section 211 the complaint, in the present case will have to be by the Court which discharged Doulatram (See section 195(1)(b) of the Code of Criminal Proceedings, 1898).

5. Shri Gehani could be charged with an offence under section 66 (b) of the Bombay Prohibition Act, 1949, if three facts are established against him, namely:-

(1) he sent a cocogem tin to Shri Doulatram;

(2) the said cocogem tin was indentical with the cocogem tin attached from the shop of Shri Doulatram; and

(3) the contents of the tin were in tact from the time it was received from Shri Gehani till the time it was attached by the Police in the shop of Shri Doulatram.

If proof of these facts the evidence of Shri Tharumal who brought the tin would be very material and necessary. But, Shri Tharumal has not been traced so far.

That being so, it would be difficult to establishe an offence under section 66(b) of the Bombay Prohibition Act, 1949 against Shri Gehani.

Id/-

Additional Secretary to Government

U.R. to H.D.No. 17250, dated the 1st November 1951.

R.D.P.
2/7/56

S.C.

Conversion - whether offence

Indian Penal Code, 1860.

A girl named Krishnabai was kidnapped by one Mahmood Idrose on 29-4-1950 and was taken to Bhendi Bazar. She was then taken to Jumma Masjid and was converted to Islam by the Moulvi. On the same day, she made a declaration before the Court that she had voluntarily embraced Islam and that she was 20 years old. The Police have found that there is no evidence of any force or compulsion being used by the Moulvi or anybody else in the matter of conversion; and in the circumstances the Police do not propose to take any action against the said Moulvi though Mahomed Idrose has been prosecuted for kidnapping. The question referred to the R.L.A. is whether the girl being in fact a minor of 15 or 16 years of age any action can be taken against the Moulvi for converting her to Islam.

2. Under the Indian Penal Code, 1860, converting a person is no offence. Offences relating to Religion are grouped in Chapter XV; but converting a person is not one of those offences. It appears that the Code has deliberately maintained a policy of absolute religious neutrality and freedom of religious discussion. In their 2nd Report, the Commissioners observe:

> "In England an attempt to convert any one from the religion of the country by the most gentle and dispassionate address, is by law and offence; to attempt the same thing by contemptuous or vituperative language is an offence which would be severely punished in practice. But the reason is that conversion is not recognised as a legitimate object. The law assumes the truth of Christianity. But

it is manifest that the law and the Legislature of this country cannot assume the t ruth o any religion. And as free discussion, or, in other words, attempts at conversion, is the best criterion of the truth of anything, the truth or falsehood of which is not already assumed by law to be beyond controversy, it seems to follow that bona fide attempt to convert ought not in this country to be treated as a crime," (vide Gour's Penal Law of India, p. 1479 and also comments under section 298 in Ratanlal's Law of Crimes.)

It is clear from this that conversion per se is not an offence in India. It is true that the girl in this case appears to be a minor of 15 or 16 years of age but that fact also does not change the legal position under the Penal Code. Sections 48 to 62 of the Bombay Children Act, 1948, create certain special offences in respect of children, but conversion is not included therein. In the circumstances, it appears that no action can be taken against the Moulvi for converting the child.

Id/4 J. R. D.)

Remembrancer Of Legal Affairs.

U.R. to H.D.No.16315, dated the 15th October 1951.

R.D.P.
2/7/56

S.C.

LEGAL DEPARTMENT.

The R.L.A. is requested to advise on the proposal to prosecute Shri Sonu Bhaga of Kikavani Khurd, Taluka Baglan, for an offence under section 182 of the Indian Penal Code.

The proposal for this prosecution relates to an allegation made by the said Sonu Bhaga first in an application made by him on 10th February 1951 to one Shri Bidkar and repeated by him in a statement made on 26th February 1951 before a Police Officer who inquired into the matter, to the effect that the Talathi Vani Tatya had recovered from him on 8th February 1951 Rs. 84-4-0 for Tagai dues but had failed to give him a receipt and was now denying having ever received the money. This allegation was enquired into and the report of the Mamlatdar, Taluka Baglan, based on the investigation made by the Police and the statement recorded by the Mamlatdar, himself, is that the allegation is false and that no such payment was made to the Talathi.

The case of the Talathi is that he did demand the tagai dues from Sonu Bhaga but the latter said that he did not have the money and asked for time and accordingly the Talathi wrote out a statement to the effect which he asked Sonu to sign but Sonu refused and went away, and therefore, the Talathi requested the others who were present to sign as witnesses, but none of them signed and all went away. The case of Sonu Bhaga is that when the Talathi asked for the tagai dues he first requested for time but as the Talathi insisted on payment he went home and brought the money and paid it, but as it was dark the Talathi asked him to take the receipt next day and when he went the next day the Talathi denied the payment itself.

The case put forward by the Talathi is supported by the statements of Sampat Nathu who is the Mulki Patil, Keda Dalpat who is Gaon Kamgar, Anna Dhaku who is the Mahar of the village and Dharma Shankar and Dogha Punju who are x the agriculturists of the Village. These x persons are alleged to be present at the time of the incident. Of these persons the Mulki Patil is not an independent witness. It seems that he and Senu Bhaga are not on good terms. The Goan Kamgar and the Mahar also cannot be xx called independent witnesse. As for the remaining two witnesses their evidence suffers from the drawback that their signatures do not x appear as witnesses to the statement prepared by the Talathi to the effect that Senu Bhaga refused to sign the statement asking for time. This circumstance throws doubt on their presence at the time of the incident itself. The case put forward by Senu Bhaga is supported by the statement of Damu Ghuge and Nana Bhau Lala who stated that Senu Bhaga did pay the amount and the Talathi promised to give the receipt the next day. The presence of Damu Ghuge and Nana Bhau at the time of the incident is admitted by the Mulki Patil hemself and by the other witnesses who support the Talathi's story. Their xxxx story of payment gets support also from the fact that the statement asking for time is signed neither by Senu Bhaga nor by any of the witnesses. It would appear that if extention of time is asked for a statement to that effect is required to be signed by the Person taking time and this is borne out by the fact that Nana Bhau asked for x time and gave a statement to the Talathi to that effect,

Two other persons were present, according to the Mulki Patil, when the alleged incident took

place. These two persons are Vishnu Bhaga and Laxman M Nimba. But these two in their statements say that they knew nothing about the incident.

In this state of evidence it is very doubtful whether the prosecution s of Sonu Bhaga for an offence under section 182 of the Indian Penal Code will succeed.

Id/-

Additional Secretary to Government.

U. O. to R. D. No. 18230, dated the 17th November 1951.

R.D.P.
2/7/56

S.C.

Legal Department.

The R. L. A. is requested to advice on the proposal to prosecute Shri Radhu Ananda Bhaske of Dharangaon undersection 182 of the Indian Penal Code and Shri Chunilal Multanmal Marwadi of Deopur under section 182 ~~&~~ read with section 109 of the Indian Penal Code.

2. The proposed prosecution is in respect of an application dated 2nd December 1950 made by Shri Radhu Ananda to the Collector of Nasik in which it was alleged that the Circle Inspector of Deopur named Shri Kute ~~xxx~~ had taken from him on or about 1st December 1950 his thumb impression on a blank piece of paper and that there after without his knowledge and consent and contrary to facts, he (Circle Inspector) appears to have filled in the said paper with allegations that his (Radhu's) landlord - Chunilal Multanmal had forcibly removed ~~fx~~ from his field 150 sheaves of Bajri representing half the crop of the land which he was cultivating as a tenant of Shri Chunilal Multanmal.

3. This application dated 2nd December 1950 has been enquired into and it has been found that the allegations contained in it against Shri Kute, Circle Inspector, are false, and that the applicant had in fact made a statement on 28th November 1950 (and not on 2nd December 1950) to the Circle Inspector alleging that his landlord Shri Chunilal Multanmal had forcibly removed 150 sheaves of Bajri out of the crop of 300 sheaves. The applicant in his statement dated 11th December 1950 to the Mamlatdar who held and enquiry has stated that his thumb impression was taken ten or twelve days earlier, which brings the date near about 28th November 1950. In respect of this disputed paper of 28th November 1950 the ~~x~~ applican

~~xxxxxxx~~

applicant in his statemant to the Mamlatdar has stated that his thumb impression on a blank paper was taken in the presence of Narhar Bala Vani and Mahadev Sahadev Kale. These two persons were examined by the Mamlatdar and in their respective statements they stated that Radhu Anand Bhaske (applicant) had on that day stated to the Circle Inspector that Shri Chunilal Multanmal had removed 150 out of 300 sheaves of Bajri. Then there is evidence of two witnesses namely, Shri Pandharinath Bala and Shri Murlidhar Laxman Kale who were examined by the Mamlatdar which goes to show that the yield from the field cultivated by the applicant must not have been less than 300 sheaves of Bajri and must have been probably 400 sheaves. But, as a matter of x fact, the Panchanama of the gathered crop stacked on the land shows that there were 150 to 175 sheaves lying there suggesting that the rest had been removed. There is further evidence of witnesses Shri Pandhari Hanmant Ghuge and Damu Vithoba Jadhav showing them the applicant had removed two carts full of sheaves to Deopur and that Chunilal was accompanying the carts. X Pandharinath has been one trip of the cart and Damu has been two.

4. In the light of this evidence there is a prima facie case against Shri Radhu Ananda Bhaske for an offence under section 182 Indian Penal Code. The success of prosecution will depend on the above witnesses sticking in Court to the versions which they have given before the Mamlatdar.

5. The case for abetment against Shri Chunilal Multanmal rests entirely on inferences. One circumstance on which the inferences are based is that the relations between the Circle Inspector (Kute and Shri Chunilal appear to be strained for some

reason which is not quite clear from the record. Another is that according to the statement of Shri Namdeo Vithal Senar who is both a School-master and a Post-master of the place, it was Shri Chunilal who on 2nd December 1950 purchased a stamped envelope and registered a letter suggesting thereby that the application d/ 2nd December 1950 made by Shri Radhu to the Collector must have been inspired by Shri Chunilal. These two circumstances, which are the only suspicious circumstances, established on the record against Shri Chunilal are not sufficient to establish a prima facie case against him for an offence under section 182 read with section 109 of the Indian Penal Code.

6. The complaint against Shri Radhu Ananda Bhaske under section 182 I.P.C. will have to be filed by the Collector of E Nasik in view of Section 195 (1)(b) of the Criminal Procedure Code.

Id/-

Additional Secretary to Government

U.R. to R.D.No. 18406, dated 19th November 1951.

R.D.P.
2/7/56

S.C.

Legal Department.

The statements made by Shri Vali Isaf Adam and two others in their letter dated 16-4-1951. are prima facie defamatory of the Talati and Circle Officer of Kosamba, Taluka Mangrol, and a prosecution by the latter for defamation can lie against the three signatories of the letter.

The facts of the case however disclose an offence under section 182 ~~x~~ Indian Penal Code also. The allegations of demanding and ~~xxxxxxxx~~ obtaining a bribe made against the talati and the ~~First~~ Circle Officer are on inquiry found to be false. They must clearly be known by the signatories of the letter to be false. One copy of the letter is addressed to the Hon'ble the Home Minister and another to the Collector of the District of Surat, both of whom are public servants. The intention was that these public servants should take action against the talti and the Circle Officer. In these circumstances there is a prima facie case for an offence under section 182 Indian Penal Code.

If prosecution for an offence under section 182 Indian Penal Code is decided upon, the complaint ~~xxx~~ will have to be by "the public servant concerned" (either by the Hon'ble Home Minister or the Collector of Surat) as ~~x~~ required by section ~~195~~ 195(1)(a) of the Criminal Precedure Code.

Id/-

Additional Secretary to Government.

U.R. to R.D.No.19156, dated the 29th November 1951.

R.D.P.
2/7/56

S.C.

Office of the R. L. A.

The story "Gulab" is the life story of a prostitute. It tells how her chastity was violated by force, how her mental opposition was slowly ~~x~~ overcome by ~~g~~ her greed for money leading her to adopt the ~~xiks~~ life of prostitute and how once having so taken to that life she by her talents and tricks could persuade rich men to lay their wealth at her feet. The story however ends on a sad~~d~~ note for she tells how her greed for wealth ~~x~~ and materialistic outlook lost her a real partner in ~~kxkxf~~ life.

The story read as a whole will not excite passions or libidinous thoughts and will not persuade anybody into accepting or approving that mode of life. There are no doubt certain descriptive passages of amours with rich men but they are few and far between and they cannot be said to overshadow the problem presented by the story. When the story is considered as a whole it cannot be said to be obscene.

Id/-

Remembrancer of Legal Affairs.

U.R. to H.D. (Poll),No.19666,

dated the 7th December 1951.

R.D.P.
2/7/52

E.C.

Legal Department.

The statement in the P.W.D. note dated 30-1-51 at pages 41 of the main file in so far as it states that the accused were convicte d by the Magistrate and acquitted by the High Court does not appear to be correct.

2. The facts are these. One engine and other articles from the Tanac Tug 112 were stolen between 1-8-46 and 10-8-46. The engine and the articles came to be missed on 9-12-1946 when an attempt was made to start the Tug. The matter was reported. Within three days the police traced the engine and some of the articles. 8 persons were prosecuted brfore the 2nd class Magistrate of Cochin for this theft. Of these 8, the case against two (accused 7 and 8) was withdrawn as they were being separately dealt with by Court Martial. Of the remaining six, three (accused 4,5, and 6) were discharged by the Magistrate on 20-10-48 as there was no prima facie evidence against them to frame a charge. Against the remaining three (accused 1,2 and 3) a charge of theft was framed and the case was heard. The Magistrate came to the conclusion that there was reasonable doubt about their guilt and he gave them the benefit of doubt and acquitted them. That judgment was given on 7-3-1949 and copy has been produced.

3. During the pendency of the trial the engine was handed over to the Port Officer Okha under an undertaking to produce it when called upon. It is not clear whether at the conclusion of the trial any order was made by the Magistrate regarding the disposal of the engine. None has been produced in the papers or referred to.

4. It appears that the case then went to the Cochin High Court. It is not clear who took it to

the High Court and on what point or points. It further appears (see page 11 of the main file) that the High Court ordered a retrial. The judgement of the High Court is not in the papers, and therefore it is not clear what was the extent of the retrial ordered. When the matter came down for retrial the Magistrate ordered the production of the Engine and then the Port Officer Okha asked the Government among other things whether the case regarding the Engine should be contested by engaging a lawyer.

5. That particular point whether the case regarding the engine should be contested by engaging a lawyer was referred to the Legal Department for advice. The Legal Department by its U.O.R. to P.W.D.No.2373 dated 7-2-51 (page 43 of the main file) asked for copies of the relevant judgments. But only the judgments of the trial Court regarding discharge of accused 4 to 6 and acquittal of accused 1 to 3 have been sent. The order, if any, passed by the trial Court regarding disposal of the engine has not been sent. The judgment of the High Court has not sent. Therefore on this in sufficient material it is not possible to give a considered opinion. However, if an opinion is to be based only on the judgment of the trial Court, then having regard to the fact that the trial Court does not in its judgment disputs the identity of the Engine in Court with the Engine stolen and has given the accused only the benefit of doubt, it would be worthwhile to engage a lawyer in order to get an order of disposal of the engine in favour of the Government.

R.D.1°
217/52
5-c.

Id/-
Additional Secretary to Government.

U.O.R.to P.W.D.No.11543.dated the 21st July 1951.

Office of the A.L.A.

Home Department invites opinion of the R.L.A. on the question whether certain speeches delivered at Bijapur Ves in the meetings of Muslims held on 18-2-51 and 27-2-51 are actionable under section 295-A of the Indian Penal Code.

2. As regards the speeches made at the meeting held on 27-2-1951 they are, as observed by Home Department directed against Shri Abdul Satar. there is nothing in the report these speeches (pages 23 to 27) which would make them actionable under section 295-A or 153-A of the Indian Penal Code.

3. As regards the speeches made at the meeting held on 18-2-1951 (pages 13 to 17) the reported speakers are Shri Abdul Gani, Shri Mehmad Abbas and Shri D.M.Maniar. The reported speechs of Shri Mohamad Abbas and Shri M.D.Maniar do not contain matter actionable under section 295-A or 153-A, Indian Penal Code. Of the reported speech of Shri Abdul Gani the only objectionable portion is "Were their : Ram, Laxman, Tukaram Good? This would show their moral level. These 8 Brahmins also do not observe religion. The are all converted. They themselves are bad and now they want to blame others." This portion of the speech must be read in the light of what precedes and what follows it. If it is read in that light, it will be seen that the idea is to show that Dr. Parulekar's opinion about Muslims in general and Muslim saints in particular is historically bad morally wrong and has not been presented in the light of comparative religious & history. Besides it must be remembered that the speaker was speaking as a result of the wounding of his feelings by reason of the article of Dr. Parulekar in the Sakal of 11-2-1951 to protest against which the meeting had been called. Therefore when the speech is considered in the light of context and in the light of this back-ground, it cannot be said that there was deliberate and malicious intention of

of outraging the religious feelings of Brahmins as a class. Moreover as the constitution stands at present section 153-A Indian Penal Code has been held to be inconsistent with Article 19(2) and it is likely section 295-A would be also so held.

4. Home Department's view that the speeches are not actionable is correct.

Id/- (J.R.D.)

Remembrancer of Legal Affairs.

U.R. to H.D.No.9710, dated the 20th & June 1951.

R.D.P.
2/7/51

S.C.

Office of the R.L.A.

The question raised for R.L.A.'s consideration is whether the book 'Bahakleli Budhi' (an old woman gone astry) is obscene so as to fall under sec. 292 of the I.P.C.

The story is of an old married woman of 85 xf who when she was on death bed due to illness is given by a quack a pill which not only saves her from death and cures her of illness but rejuvenates her whole physical system so that she steps out of her bed a young woman of beauty and vigour in her teens. Naturally her links with her old husband of 95 are all severed and she embarks onx a new life which becomes necessarily a life of sexual pleasure out of wedlock. This life eventually leads her to disgrace and violent death.

The story contains several passages of her amourous pranks firstly with her own nephew, next x with her own gx gardener and lastly with an artist. The nephew and gardener reject her advances. The artist falls for them but eventually gives her up.

The question is whether in view of these passages in the book describing the amorous pranks of the woman x the book can be said to be obscene. As has been repeatedly laid down by judicial decisions "the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences and ix into whose hands a publication of this sort may fall". On that test the book cannot be called obscene. The descriptive passages relating to her pranks are not so sexually exciting and are not likely to deprave the morals when considered in their context. The woman is described as "And Old Woman gone astray'. Therefor from the very start the whole thing is disapproved.

Therefore from the very start the whole thing is disapproved. Two young men reject her advances shewing that youth, beauty and passion are not the only thing in life. The one man who falls for her eventually deserts her showing that sexual charms alone cannot win a lasting companionship. The woman's f life comes to a violent end. Considering all these facts the Court will not attach importance to the isolated passages in the book. It will read the book as a whole and would hold that it does not fall within the mischief penalised by sec. 292 of the I.P.C.

Id/- (J.R.D.)

Remembrancer of Legal Affairs.

U.R. to H.D.No.9915,dated the 22nd June 1951.

R.D.P.
3/7/56

S.C.

Legal Department.

There are two applications made by Shri Pandu Hari Sangulkar. One is dated 9-8-1951 and addressed to the Mamlatdar of Jath. The other (un-dated) is a subsequent application addressed to the Hon. the Home Minister.

It appears from the report of the District Superintendent of Police, South Satara, dated 17-9-1951 that inquiries have been made only with respect to the application addressed to the Hon. the Home Minister, in which allegations are made in respect of illtreatment on 17-9-1951, and that those allegations have been found to be false.

The papers of that inquiry have not been sent to the Legal Department. It is presumed that the Home Department is satisfied that the allegations are false. If the allegations can be proved in a Court of Law to be false a prosecution under section 182 Indian Penal Code is likely to succeed. For such a prosecution however, the complaint will have to be by the public servant to whom the letter was addressed, here the Hon. the Home Minister, as required by section 195 (1)(a) of the Criminal Procedure Code

Id/-

Additional Secretary to Government.

U.R. to H.D.No. 16609,dated the 19th October,1951

R.D.P.
3/7/56

S.C.

Office of the R.L.A.

The R.L.A. is requested to advise whether a successful prosecution for the offence of criminal breach of trust in respect of 80 bags of ground-nut cake can be launched against Shri P. K. Parandkar.

2. The material facts are these: Shri Parandkar was the Agricultural Assistant under the District Agricultural Officer, Sholapur. He was in charge of Gadegoan Depot, Taluka Pandharpur, District Sholapur. On 29-12-1950, 80 bags of ground-nut cake left the Depot in a lorry. The lorry was driven by a driver named Babu, and on the lorry there were two persons Shri Dharma Bodhale Shelke and Shri Baburao Patil. When the lorry arrived at Pandharpur, Shri Baburao Patil saw one Shri Baburao Bagal, a resident of Gadegoan who had gone to Pandharpur to attend a T.D.A. meeting and told him that the driver of the lorry was telling him that the ground-nut cake in the lorry was going into the black-market. Shri Baburao Bagal, therefore, got into touch with the Police and got the lorry attached. The case against Shri Parandkar is that he sold these eighty bags of ground-nut cake belonging to Government to Shri Dharma Shelke for Rs. 1600/- consisting of Rs. 1400/- in cash, and a golden ring valued Rs. 200/-, and he did so without anthority and with a view to misapprovpriate the money.

3. In support of the case against Shri Parandkar the evidence disclosed in the enquiry held by the Inquiry Officer is as follows:-

(1) The admission of Shri Parandkar before the Inquiry Officer that he had sold the ground-nut cake without authority to Shri Shelke for the above amount;

(2) The statement of Shri Shelke that he had purchased from Shri Parandkar the said ground-nut cake for the above sum;

(3) The statemnet of Shri Baburao Patil that he heard from the driver of the lorry that the ground-nut cake in the lorry was going into the black-market; and

(4) The statement of Baburao Bagal of what he was told by Shri Baburao Patil.

4. Of these pieces of evidence the statements of Shri Baburao Patil and Shri Banurao Bagal are not of much value because they are based on what was stated to Shri Patil by the driver Babu. But the said driver Babu was not examined and it is not clear whether he can be traced now or whether he will support the statement of Shri Patil about the ground-nut cake going into the black-market. Shri Parandkar has retracted his confession before the Inquiry Officer and, therefore, the said confession is of extra judicial character and is likely to be challenged under section 24 of the Evidence Act. At any rate, it would require to be corroborated before it could be accepted by a Court of Law. The only corroboration available is the evidence of Shri Shelke who, however, stands on the footing of an accomplice. At any rate, it is doubtful, as can be seen from the letter of the Director of Agriculture, dated the 4th October 1951, whether Shri Shelke and Shri Baburao Patil would depose in favour of the prosecution. In view of these facts and having regard to the fact that Shri Parandkar's explanation that he was sending the ground-nut cake to the Pandharpur Godown is consistent with the fact that the lorry was attached at

at Pandharpur and may also be consistent with the entries in the Stock Register to which Shri Parandkar has referred in his statement, it is very doubtful whether the prosecution of Shri Parandkar for the criminal breach of trust is likely to succeed in a Court of Law.

Id/- (J.H.D.)

Remembrancer of Legal Affairs.

U.R. to A. & F.D.No.20262,dated the 19th Decr. 1951

R.D.P.
~~xxxx~~
3/7/56

S.C.

Legal Department.

The accused in this case were charged under section 182 read with sections 109 and 114 of the Indian Penal Code, They have been acquitted by the Presidency Magistrate, 21st Court by his judgment dated the 13th July 1951.

2. The facts in brief are that Accused No. 1 who is the daughter of accused No. 2 made an application in May 1946 to the Secretary, Finance Department, Government of India, for issue of a direction that 15 notes of Rs. 1000/- each which she submitted along with the application be cashed by the Reserve Bank of India although the time for presentation of those notes as laid down under the High Denomination Bank Notes (Demonetisation) Ordinance, 1946, had passed. She gave as a reason for the delay the ground that ~~that~~ she was suffering from Typhoid from January to April 1946 and in support of that statemnet she forwarded an ~~affidavit~~ affidavit and a Medical Certificate signed by Dr. Talati. The enquiries made by the Government revealed that her statement of illness was not true and that she was really a tool in the hands of Accused No. 2 at whose instance this application was probably made. The two accused were, therefore, prosecuted under section 182 of the Indian Penal Code.

3. The accused have been acquitted by the Presidency Magistrate on the ground that there was no sufficient evidence to bring home to the accused the offence with which they were charged. It appears that on the evidence adduced in the Court the acquittal must be held to be correct. The only material witness examined by the provicution on the question at issue namely, whether the

statement made by accused No. 1 in her application was false, was Dr. Talathi. His testimony, however was not of much held to the prosecution because while stating that he did treat a leady patient brought by accused No. 2 from 18th January to 28th April 1946, he stated that he was unable to identify, having regard to the ~~xxxx~~ lapse of time, who that particular patient was. This being the state of evidence, the Magistrate was apparently right in acquitting the accused.

4. The police Prosecutor who conducted the case, and the Public Prosecutor, who was consulted after the judgment was deliverod, do not consider this to be a fit case for going in appeal. The Commissioner of Police, who has forwarded the papers, is of the same view. That view is correct.

Id/-

Additional Secretary to Government.

U.R. to F.D.No.16998(Confl),dated the 25th October 1951.

R.D.P.
3/7/86

S.C.